



**MINUTES OF A REGULAR MEETING OF THE
UPLAND PLANNING COMMISSION
WEDNESDAY, MAY 26, 2021
AT 6:30 P.M.**

1. CALL TO ORDER OF THE PLANNING COMMISSION REGULAR MEETING

Chair Aspinall called the Regular Meeting of the Upland Planning Commission to order at 6:30 P.M. in the Council Chambers of Upland City Hall.

2. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by *Vice Chair Schwary*.

3. ROLL CALL

MEMBERS PRESENT: Chair Aspinall, Vice Chair Schwary, Commissioners Anderson, Caldwell, Grahn, and Mayer

MEMBERS ABSENT: Commissioner Shim

ALSO PRESENT: Development Services Director and Planning Commission Secretary Dalquest, Contract Planning Manager Poland, Associate Planner Winter, Assistant Planner Hong, Deputy City Attorney Maldonado, Administrative Analyst Davidson

4. APPROVAL OF MINUTES

Moved by *Vice Chair Schwary* to approve the Minutes of the Planning Commission meeting of April 28, 2021.

The motion was seconded by *Commissioner Mayer*.

The motion carried by the following vote (5-0-1):

AYES: *Chair Aspinall, Vice Chair Schwary, Commissioners Caldwell, Grahn, and Mayer*

NAYS: *None* ABSTAINED: *Commissioner Anderson*

ABSENT: *Commissioners Shim*

5. COUNCIL ACTIONS

Development Services Director Dalquest advised there were no reportable items from the May 10th City Council meeting. He reported at the May 24th meeting, the City Council approved the first reading of an Ordinance amending Upland Municipal Code (UMC) Chapter 17.15 to allow and regulate electronic changeable copy signs within a high school site located in the Public/Institutional (PB/I) Zoning District. He advised the second reading will occur at the next City Council meeting.

6. FUTURE AGENDA ITEMS

Contract Planning Manager Poland reported the next Planning Commission meeting will be on June 23rd and advised there will be a public hearing for a Conditional Use Permit (CUP) for a four-story self-storage facility on 20th Street in the Colonies. He reported the second item will be a new business item requiring administrative determination for a minor alteration to an approved use for the Upland Hills Country Club. He specified they are looking to add a warm-up area south of the tent.

7. ORAL COMMUNICATIONS

Chair Aspinall opened oral communications. Seeing no members of the public wishing to address the Commission, *Chair Aspinall* closed oral communications.

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Chair Aspinall requested to hear Agenda Item No. 9 ahead of Item No. 8.

Moved by *Vice Chair Schwary* to hear Item No. 9 ahead of Item No. 8.

The motion carried by the following vote (6-0):

AYES: *Chair Aspinall, Vice Chair Schwary, Commissioners Anderson, Caldwell, Grahn, and Mayer*

NAYS: *None* ABSTAINED: *None*

ABSENT: *Commissioners Shim*

9. BUSINESS ITEMS

- A. Presentation on the design of the Historic Downtown Upland Urban Plaza Project. (Staff Person: Robert D. Dalquest)

Development Services Director Dalquest reported Development Services staff have developed the concept of a new urban plaza to be located on two vacant parcels totaling 0.69 acres to help revitalize downtown. He reported the site is located on the north and south sides of the Pacific Electric Bike Trail between 2nd Avenue and 3rd Avenue. He advised downtown lacks a public urban gathering space and noted this can showcase the City's history and art while also serving as a trailhead for the Pacific Electric Bike Trail to encourage riders to stop downtown.

Development Services Director Dalquest reported Architerra Design Group was hired to design the space and noted staff and the consultant conducted two public workshops. He explained staff and the consultants are seeking input from the Planning Commission and advised no formal action is required.

Architerra Design Group Director of Design *Gregg Denson* reported their Civil Engineer did an aerial topographic survey of the space. He advised required design elements include bicycle storage, a drought-tolerant shady landscape, murals and artwork, lighting, an adequate number of trash receptacles, dog waste stations, and a donor brick program for funding. He noted the site has some underground constraints from public utilities. Additionally, he reported they created a couple of different designs and received good public feedback about which led to alterations.

Mr. Denson detailed the proposed site plan highlighting the main and secondary entranceways, bollards restricting vehicular access, main entry plaza, stage area, landscaping, sitting areas with picnic tables, bicycle repair and storage area, event kiosk, bioswale areas, a gaming zone, and a walking pathway along with the bike trail.

In response to *Vice Chair Schwary's* inquiries, *Mr. Denson* advised 250-400 people could attend a general concert within the plaza. He estimated the cost of the project will be between \$1 million and \$1.5 million. *Development Services Director Dalquest* reported this project was one of 10 selected by *United States Congressman Pete Aguilar* for potential Community Project funding and advised the City is requesting \$1 million in federal funds. *Mr. Denson* explained costs associated with construction such as the increased cost of lumber.

In response to *Chair Aspinall's* inquiry, *Mr. Denson* advised the project could be broken up into phases if needs be for budget constraints or other reasons.

In response to *Vice Chair Schwary's* inquiries, *Mr. Denson* advised the level of funding to be derived from donor bricks is up to the City. He stated most cities he has worked with ask anywhere from \$50 up to thousands of dollars. He advised the percentage of the project this ultimately funds is usually about 10%, depending on the donors and their passion for the project.

In response to *Commissioner Mayer's* inquiry, *Mr. Denson* advised the City could make the park available to rent for private events.

Commissioner Anderson expressed support for the project and thanked staff.

Administrative Analyst Davidson reported no public comments for the item.

8. PUBLIC HEARING

A. CONDITIONAL USE PERMIT NO. 20-0010.

Project Description: Consideration of a request for an existing convenience store, H Mart, to upgrade their current ABC License from the sale of beer and wine only (Type-20 ABC License) to the sale of beer, wine, and distilled spirits for consumption off-premises where sold (Type-21 ABC License). The project site is in the Commercial/Residential Mixed-Use zoning district and located at 1007 W. Foothill Boulevard, further described as Assessor's Parcel Number 1006-481-11. (Staff Person: Jacqueline Hong)

Applicant: Vishnubhai Narandas Prajapati, H Food Mart

CEQA Determination: The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines 15270(a), because CEQA does not apply to projects which a public agency rejects or disapproves.

Appeal Period: The Planning Commission's decision is final. An appeal period to contest the decision is May 27, 2021 to June 7, 2021.

Assistant Planner Hong reported the applicant is requesting to upgrade an existing Type-20 Alcoholic Beverage Control (ABC) License to a Type-21 ABC License allowing for the sale of distilled spirits for off-premises consumption in addition to the already-permitted beer and wine. She reported the business has been licensed with the City since 2002 and has been classified as a Convenience Food Store since a 2004 ownership change. She detailed changes to the UMC in 2015 requiring an update to the applicant's ABC License to now include a CUP and to be a 1,000-foot distance from sensitive uses. She reported Mountain View Mennonite Church and Sycamore Elementary School are both within 1,000 feet of the store. She advised the store is located in over-concentrated Census Tract 8.18, which allows for three off-sale licenses but presently has seven including the applicant. She concluded the request does not meet the zoning requirements of the UMC due to its proximity to sensitive uses and it is located in an over-concentrated Census Tract.

In response to *Vice Chair Schwary's* inquiries, *Development Services Director Dalquest* reported as part of a basis for the ABC are findings of public convenience necessity and clarified the ABC would generally defer the applicant to the City to make this finding. He confirmed the question of over-concentration comes back from the ABC to the local jurisdiction. *Assistant Planner Hong* confirmed the applicant currently sells beer and wine but wants to add distilled spirits.

In response to *Commissioner Mayer's* inquiry, *Development Services Director Dalquest* confirmed that even with staff's recommendation the store could still do what it is presently doing but could not expand to distilled spirits for not meeting the requirements.

Chair Aspinall opened the public hearing.

On behalf of the applicant, *Dick Evitt* noted the ABC has set up a guideline for how many liquor licenses can be in the Census Tract but noted the City has the authority to grant as many as it wants. He advised the applicant already has a Type-20 ABC License and disagrees with the City's 1,000-foot radius stating the school and church are beyond 1,000 feet in his calculations. He expressed support for his client and noted his family-run business helps the community. He advised the Type-20 License would be canceled if the Type-21 License is issued thus having no impact on the number of licenses in the Census Tract. He noted he submitted the names of 144 supporting area residents and requested approval of the license.

In response to *Chair Aspinall's* inquiry, *Development Services Director Dalquest* clarified the radius on *Mr. Evitt's* map does go through the church's property and expressed problems with the accuracy of *Mr. Evitt's*

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map's scale in regards to the school. *Assistant Planner Hong* clarified the map she used was generated by Nobel Data Systems on GeoViewer and shows the school is 955 feet away from the store.

In response to *Vice Chair Schwary's* inquiry, *Assistant Planner Hong* clarified to satisfy the code there should be no sensitive uses within 1,000 feet and there are in this case. *Development Services Director Dalquest* advised the code is written where if the use is within the buffer it does not meet the requirement.

In response to *Chair Aspinall's* inquiry, *Assistant Planner Hong* clarified her map shows 1,000 feet from the center of the tenant space to match how it is written in the code. *Commissioner Mayer* noted the center of the applicant's map is closer to Starbucks than the applicant's store.

In response to *Commissioner Mayer's* inquiry, *Development Services Director Dalquest* confirmed if the radius goes into the sensitive uses' parcel at all, the whole parcel is considered to be included.

Seeing no members of the public wishing to address the Commission, Chair Aspinall closed the public hearing.

Commissioner Anderson noted her concern is not with the parcel but rather the concentration of licenses.

Commissioner Caldwell noted the applicant cannot meet any of the requirements. She commended staff for being so forthright with the applicant in allowing them to pull their application and receive a full refund.

Vice Chair Schwary noted he is torn because he would like the business to go forward, however, the Planning Commission is obligated to follow the rules and regulations leading to a recommendation of denial.

Development Services Director Dalquest noted an error in the Resolution. He reported in Section 1 (findings) the findings are all accurate but in the second line "approval" should be switched to "denial."

Moved by *Vice Chair Schwary* to find the proposed project is statutorily exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines 15270(a) because CEQA does not apply to projects which a public agency rejects or disapproves. He also moved to approve a Resolution denying CUP No. 20-0010 for the sales of beer, wine, and distilled spirits under a Type-21 ABC License within an existing convenience store located at 1007 W. Foothill Boulevard.

The motion was seconded by *Commissioner Anderson*.

The motion carried by the following vote (6-0):

AYES: *Chair Aspinall, Vice Chair Schwary, Commissioners Anderson, Caldwell, Grahn, and Mayer*

NAYS: *None* ABSTAINED: *None*

ABSENT: *Commissioner Shim*

B. CONDITIONAL USE PERMIT NO. CUP-21-0004, VARIANCE VA-21-0001, DEVELOPMENT PLAN REVIEW NO. DPR-19-0002, AND ENVIRONMENTAL ASSESSMENT REVIEW NO. EAR-21-0004.

Project Description: Consideration of a request for modifications to an existing drive-through restaurant (Chick-Fil-A), which entails a variance to encroach into the required setback to widen the drive-through lane, a 231 square foot building addition, and the demolition of one (1) drive-through trellis and the installation of two (2) canopies located within the existing Colonies Shopping Center in the Highway Commercial (CH) designation of The Colonies at San Antonio Specific Plan. The Project site is located at 1949 N. Campus Avenue, further described as Assessor's Parcel Number 1044-111-19. (Staff Person: Joshua Winter)

CEQA Determination: The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 and 15303 of the CEQA Guidelines.

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Applicant: Kelsey Wu, 4G Development

Appeal Period: The Planning Commission's decision is final. An appeal period to contest the decision is May 27, 2021 to June 7, 2021.

Associate Planner Winter reported the request is to modify Chick-fil-A's existing CUP requiring a variance to expand the drive-through to encroach eight feet into the required 15-foot setback along with a Development Plan Review (DPR) to establish the site layout and project design. He specified this involves two building additions totaling 231 square feet and widening the single drive-through lane into a dual-lane drive-through including a bypass lane. He advised the project includes demolishing one of the drive-through trellis and the installation of two canopies. He noted Chick-fil-A is located within the Colonies Shopping Center in the Highway Commercial (CH) designation of the Colonies at San Antonio Specific Plan Area.

Associate Planner Winter reported there will be a 72 square foot addition on the northwest corner of the building to be used as a kitchen area and a 159 square foot addition on the northeast corner of the building for drive-through support. He advised the additional canopy will be over the drive-through lanes with the second canopy being a replacement for the current one. He detailed where the restaurant plans to add the additional drive-through lane keeping the same directional flow and where the applicant plans to encroach eight feet into the 15-foot landscaped setback area abutting North Campus Avenue.

Associate Planner Winter listed the five reasons where a variance can be permissible based upon reasons where a building cannot meet the required setbacks. He reported staff found the lot has a triangular shape with an unusual topography and additionally limited building area due to a retaining wall for Interstate 210 all making the double lane more challenging than other surrounding drive-throughs. He displayed renderings of the small additions to the building itself and what the new canopies will look like. He recommended the Planning Commission find the project exempt from CEQA and adopt a Resolution approving the Variance, CUP, and DPR.

In response to *Commissioner Mayer's* inquiry, *Associate Planner Winter* clarified the setback applies to the structure and not the overhanging canopy.

In response to *Chair Aspinall's* inquiries, *Associate Planner Winter* noted the second lane will briefly go back to one lane due to the retaining wall at the edge of this tight lot. He clarified Chick-fil-A staff will direct drive-through customers when to use the bypass lane.

In response to *Vice Chair Schwary's* inquiry, *Associate Planner Winter* agreed the location of the Chick-fil-A is towards the end of the shopping center and expressed hopes the second lane could help alleviate some of the congestion from customers waiting to get to the drive-through.

In response to *Commissioner Mayer's* inquiries, *Associate Planner Winter* confirmed none of the landscaping will change significantly and this will just be a matter of how traffic flows around the restaurant. He confirmed other drive-through restaurants in the area could make a similar application for a variance if the City found they had an unusual physical circumstance. He advised others on square lots do not have the same situation as Chick-fil-A.

In response to *Commissioner Grahn's* inquiry, *Associate Planner Winter* reported the applicant did not supply information reflecting the increase in customer service efficiency.

Chair Aspinall opened the public hearing.

Patrick Salcedo, Civil Engineer for the applicant, advised this process is ongoing at many Chick-fil-As nationwide as a response to drive-through congestion during the pandemic when dining rooms were closed. He noted most new stores have the double lane incorporated. He noted there is not a lot of data yet about efficiency increases because older stores are still being upgraded but the early observation is an improvement in the speed of the drive-through cue. He advised the early data is pointing to a particularly strong impact where there is a bypass lane. He noted the kitchen expansion is to make more sandwiches to keep the customer line moving.

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In response to *Commissioner Anderson's* inquiry, *Mr. Salcedo* clarified employees will direct customers whether to go to the main pickup window or the bypass lane where an employee would walk the order out to the car through the door in one of the proposed building additions.

In response to *Chair Aspinall's* inquiry, *Mr. Salcedo* clarified customers in the bypass lane typically pay an attendant with an iPad.

Seeing no members of the public wishing to address the Commission, Chair Aspinall closed the public hearing.

Moved by *Vice Chair Schwary* to find the proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 and 15303 of the CEQA Guidelines. He also moved to approve Variance No. 21-0001, CUP No. 21-0004, and DPR No. 19-0002 subject to the required findings and subject to conditions of approval contained in the Resolution.

The motion was seconded by *Commissioner Mayer*.

The motion carried by the following vote (6-0):

AYES: *Chair Aspinall, Vice Chair Schwary, Commissioners Anderson, Caldwell, Grahn, and Mayer*

NAYS: *None* ABSTAINED: *None*

ABSENT: *Commissioner Shim*

C. CONDITIONAL USE PERMIT NO. 21-0005, DEVELOPMENT PLAN REVIEW NO. 21-0003, AND ENVIRONMENTAL ASSESSMENT REVIEW NO. 21-0003.

Project Description: Consideration of a request to construct and operate a 3,032 square foot drive-through car wash with associated parking, self-serve vacuum stations, landscaping, and lighting improvements on 0.64 acre located within the Highway Commercial (CH) designation of The Colonies at San Antonio Specific Plan. The Project site is located at 1300 E. 20th Street, further described as Assessor's Parcel Number 1044-151-05. (Staff Person: Mike Poland)

CEQA Determination: The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15332 of the CEQA Guidelines.

Applicant: John Engelhardt, Planet Car Wash, LLC

Appeal Period: The Planning Commission's decision is final. An appeal period to contest the decision is May 27, 2021 to June 7, 2021.

Contract Planning Manager Poland reported the request is for a CUP and Environmental Assessment Review (EAR) to construct a Planet Car Wash totaling 3,032 square feet with two free-standing vacuum station canopies, and related site improvements at 1300 East 20th Street within the Colonies at San Antonio Specific Plan Area. He noted this land is within the Ford of Upland Development Plan in an area originally intended to display vehicles for sale or lease. He advised it does not reduce the required customer or employee parking. He noted the car wash will be bordered to the west by a five-suite commercial building and a Shell gas station which were both approved last year and not yet constructed. He reported the City received messages from residents to the east concerned about the noise but noted they both live more than 1,100 feet from the site and there is ample noise buffer from the Ford of Upland building and traffic on Interstate 210.

Contract Planning Manager Poland reported the car wash has numerous environmentally friendly features including solar power, a state-of-the-art water recycling unit, LED light fixtures, and others. He detailed the site plan, showed renderings of the finished proposed project, and noted how it will work into the Ford of Upland site. He advised the applicant will landscape 16% of the site exceeding the minimum requirement. He reported staff has found the proposal is consistent with the Colonies at San Antonio Specific Plan and City regulations, deemed it appropriate for the Highway Commercial District and recommends approval.

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In response to *Commissioner Caldwell's* inquiries, *Contract Planning Manager Poland* confirmed the globe logo atop the structure will be neither illuminated nor moving. He confirmed it is a cage and not glass.

In response to *Commissioner Grahn's* inquiry, *Contract Planning Manager Poland* confirmed the car wash at the Shell station will still be built. He advised the Shell car wash along with the one nearby at an Arco gas station are considered secondary car washes as they are not the primary business of those tenants.

In response to *Chair Aspinall's* inquiries, *Contract Planning Manager Poland* confirmed the gas station car washes are much smaller than the one in the proposal. He advised the proposed car wash will also have more modern equipment. He confirmed all businesses within 500 feet of the site received notices and noted the owner of the two gas station car washes did not respond. He advised the Ford of Upland lot's gate will remain open until 10 p.m. when the car wash closes. *Development Services Director Dalquest* reported he believes there is overnight security at Ford of Upland.

Chair Aspinall opened the public hearing.

Planet Car Wash, LLC Partner *Dan Richards* advised they are in complete agreement with all conditions of approval. He advised the globe logo is trademarked and their slogan is "saving the planet, one wash at a time." He explained the car wash will be unique in the western United States and will have the maximum number of permissible solar panels, the maximum amount of water recycling, and use biodegradable chemicals. He advised his facility will wash a car with just 17 gallons of water whereas it usually takes 140 gallons if a person is doing it on their own at home. He hopes this will be the first of what they anticipate will grow to 50 locations.

In response to *Commissioner Caldwell's* inquiry, *Mr. Richards* clarified there might be some lights on the globe atop the building but their discussions have not yet reached this point.

In response to *Chair Aspinall's* inquiry, *Mr. Richards* clarified they will be leasing the property from Ford of Upland and Ford of Upland will be controlling the security gate. He confirmed there will be on-site security.

In response to *Vice Chair Schwary's* inquiry, *Mr. Richards* reported the facility will be wildly different than a gas station car wash. He advised he has a good rapport with the owner of the two gas stations but made the analogy they are selling hamburgers while he is selling steak. He noted as an example it will have an LED light show for the entertainment of customers especially children as they go through the car wash. He advised the globe is something iconic Upland will want in its next series of marketing brochures. He reported an experienced General Manager was hired before even opening their doors.

In response to *Commissioner Anderson's* inquiry, *Mr. Richards* clarified they are working with Ford of Upland on internal car washes but added those plans are still coming together.

In response to *Chair Aspinall's* inquiry, *Contract Planning Manager Poland* clarified the City's sign code states anything illuminated is subject to the approval of the Development Services Director as an administrative decision.

Seeing no members of the public wishing to address the Commission, Chair Aspinall closed the public hearing.

Moved by *Commissioner Anderson* to adopt a Resolution finding the proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15332 of the CEQA Guidelines. She also moved to approve CUP No. 21-0005, DPR No. 21-0003 and EAR No. 21-0003 for the Planet Car Wash Project subject to the conditions and findings contained in the Resolution Attachment A.

The motion was seconded by *Vice Chair Schwary*.

The motion carried by the following vote (6-0):

AYES: *Chair Aspinall, Vice Chair Schwary, Commissioners Anderson, Caldwell, Grahn, and Mayer*

NAYS: *None* ABSTAINED: *None*

ABSENT: *Commissioner Shim*

D. ZONING CODE AMENDMENT NO. 21-0001.

Project Description: Consideration of a Resolution recommending to the City Council adoption of an Ordinance amending Upland Municipal Code Title 17 (Zoning Ordinance) to establish maximum size restrictions for warehouse facilities in the Commercial/Industrial Mixed-Use (C/I-MU), Light Industrial (LI) and General Industrial (GI) zoning districts, and require a conditional use permit for warehouse facilities 25,000 square feet or smaller in the Commercial/Residential Mixed-Use (C/R-MU) and Commercial/Office Mixed-Use (C/O-MU) zoning districts, and prohibit warehouse facilities over 25,000 square feet within these Mixed-Use zoning districts. (Staff Person: Joshua Winter)

CEQA Determination: The proposed amendment is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines §15601(b)(3).

Applicant: City of Upland

Appeal: The Planning Commission's decision is a recommendation to the City Council.

Commissioner Mayer advised one of the letters received is from one of his clients so he must recuse himself from Item No. 8D. He recused himself and left the dais at 7:58 p.m.

Associate Planner Winter reported the item asks the Planning Commission to consider whether to redefine "warehousing," review the proposed amendment, and discuss if the warehouse-size limitations should be cumulative. He displayed a proposed amendment to UMC Title 17 prepared after City Council discussion which limits the size of warehouses.

Associate Planner Winter reported the proposed amendment states warehouses are limited to 25,000 square feet in the LI zone. It states that in C/I-MU zones, warehouses between 25,000 and 50,000 square feet require a CUP, and those over 50,000 square feet are not permitted. It identifies in the GI zone, warehouses between 50,000 and 100,000 square feet require a CUP, and those over 100,000 square feet are not permitted. It also states in the C/R-MU and C/O-MU zones warehouses over 25,000 square feet are not permitted and those under 25,000 square feet shall require a CUP.

Associate Planner Winter reported amending the definition of "warehousing" is not in the City Council's direction but is a staff recommendation for purposes of clarity. He read the current definition in UMC Section 17.51.010 and displayed land-use tables for warehouses within different zones. He advised this primarily applies to the southwestern corner of the City but also applies to areas of the entire City.

Associate Planner Winter read staff's extended proposed definition of warehousing including physical aspects of the building and its intended uses. He clarified the proposed delineation between manufacturing facilities that warehouse finished products on-site as a secondary space usage and a building solely used for warehousing and distribution of finished goods. He detailed new land use tables for a variety of zones to accommodate the City Council's direction.

Associate Planner Winter reviewed situations where a CUP will be required for a warehouse and how it will allow for discretion over approval including impacts on a surrounding neighborhood. He advised staff has identified at least 11 properties that will be limited by the zoning amendment.

In response to *Commissioner Anderson's* inquiries, *Associate Planner Winter* clarified in one of his examples set in a C/I-MU zone to show how a building could still be larger than 50,000 square feet but its use would be limited to 50,000 square feet of warehouse space. He confirmed a warehouse on this lot could not be larger than 50,000 square feet and a CUP would not be permissible. *Development Services Director Dalquest* clarified the measure of a warehouse under the proposal is cumulative so the applicant could have two 25,000 square foot warehouses.

Associate Planner Winter noted there will be several warehouses that will fall into the category of a legal non-conforming use as they would not meet the proposed Zoning Code Amendment. He clarified uses can be

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continued unless the warehouse has been abandoned for longer than six months. He advised a warehouse destroyed by more than 50% of its current market value could not be rebuilt but one destroyed by 50% or less of its current market value could be rebuilt with a CUP. He detailed limits on alteration and expansion of the existing legal non-conforming warehouse. He advised there will be a 10-year amortization period before operations must cease.

Associate Planner Winter reported staff recommends the adoption of Zoning Code Amendment No. 21-0001 but noted the Planning Commission can discuss and/or introduce a variety of potential changes to the amendment.

In response to *Vice Chair Schwary's* inquiries, *Associate Planner Winter* advised the process to build a warehouse today includes the application, having the application reviewed by staff, and determining if it is a permitted land use if deemed compliant. He advised the Development Services Director can approve the application but will often refer it up to the Planning Commission for review. He confirmed the Planning Commission would review it based upon the merits of the project. *Development Services Director Dalquest* advised there could be a CEQA review as well.

In response to *Chair Aspinall's* inquiry, *Development Services Director Dalquest* confirmed these types of buildings would typically come to the Planning Commission due to their size. *Associate Planner Winter* noted this is especially true when there is an environmental document.

In response to *Vice Chair Schwary's* inquiries, *Associate Planner Winter* confirmed the Planning Commission is the final acting body for this type of project and land use, as things stand today. *Development Services Director Dalquest* clarified there are existing legal non-conforming uses today based upon the latest General Plan update. He advised there are a few of these under current the ordinances. He clarified the definition of a legal non-conforming use and confirmed the proposed Zoning Code Amendment came from the City Council. He clarified the amendment's creation was greenlit by the City Council but there is was no commitment to approve the amendment only direction to have it processed.

In response to *Chair Aspinall's* inquiries, *Development Services Director Dalquest* confirmed legal non-conforming uses may continue for a period of 10 years which is the amortization method typically utilized in many Zoning Codes. He clarified after 10 years the property would have to be used under the new zoning. He clarified there is an issue of the investment from the property owner after the 10-year window expires in how to retrofit the building. He advised the applicant can request an extension through the City Manager and noted it is not a frequent request.

In response to *Commissioner Caldwell's* inquiries, *Associate Planner Winter* clarified the definition of a warehouse includes the statement "it does not manufacture, process, or assembles finished products on site". He confirmed a manufacturing facility too large to be a warehouse under the proposal could not be converted into a warehouse, and if it were, would become legal non-conforming. He confirmed this can be problematic to the property owner in terms of both refinancing and insurance.

Chair Aspinall opened the public hearing.

Carol Reinhart of Bongiovanni Construction Company urged the Planning Commission to reject the proposed changes due to excessive restrictions imposed on land she owns in Upland near Cable Airport because warehousing is the only commercially viable usage. She advised the City's real estate consultant has identified large warehousing as the best use of her property and this cap would reduce warehousing on her site by 90%. She noted with the amendment her large property would remain vacant and provide no economic benefits to the City. She expressed disagreement with the finding of no environmental impact which she stated will force landowners to subdivide. She believes her property in the airport compatibility area should be exempt from the application.

Sam R. Greek of Martin Commercial Group and owner of two industrial business parks in Upland noted one of his facilities was cited by *Associate Planner Winter* as an example of legal non-conforming uses under the proposal and advised the zoning at the time was part of the reason for their purchase in the 1980s. He explained rezoning in the 1990s crippled the property's manufacturing uses and the proposed rezoning would similarly cripple the warehousing uses. He advised his properties have space for 70 businesses creating jobs for Upland and strongly urged denial of the proposed amendment.

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Bob Cable spoke on behalf of Cable Airport expressing concerns on these limits on commercial uses in a commercial area. He advised a small group of vocal individuals are trying to restrict businesses from bringing their tax dollars to the City. He explained that past rezoning's created housing developments under the airport's flight path generating complaints about the noise. He noted the amendment ties the hands of the City's possible future and questioned what the storage of commercial goods is in an era of changing commerce. He advised no financial analysis of the amendment's potential ramifications are included and lacking data urged the Planning Commission not to pass this on a whim.

Tanner Clark spoke on behalf of his 100-year old family-owned business in Upland providing space for local entrepreneurs. He explained the proposed changes do not impact his business, but he expressed the concerns of his tenants. He advised the future is difficult to predict and changes like this can have negative unintended consequences. He noted warehouses should not be counted cumulatively and advised 25,000 square feet is not a large space. He explained that from the experience of tenants in other local communities they would be hurt by this limitation. He decried introducing uncertainty and how it hurts the City's reputation to deter future investments. He requested the removal of the amortization language and stated the amendment would harm the community as a whole.

Mladen Buntich spoke as an Upland property owner who would have a considerable impact on his 8.5 acres from the proposed zoning change. He advised he did not have much notice for such a big deal noting the City's notice is undated. He noted the notice's threat of what would be admissible in court compels him to ask as many questions as possible at this public meeting. He explained the notice did not give him enough time to consult with a land-use attorney. He inquired about whether it is standard protocol for the City not to date the notices, inquired if this is the first opportunity to address the proposed zoning changes, and formally requested copies of previous notices he may have missed. He inquired as to whether the Planning Commission will make a recommendation after this meeting or if there will be more opportunities for input. He inquired why the size of the property is irrelevant as it limits returns on larger parcels. He inquired what studies were done for analysis and if they are available to the public, who put those studies together, and which property owners received a notice from the City. He questioned whether or not this is for the public good and stated it would be bad governance with hundreds of millions of dollars at stake if property owners cannot use their properties to their full extent. He requested the Planning Commission hold off on making a recommendation until property owners can study more about changes.

Vivian Ruff expressed health concerns as a homeowner at Harvest at Upland about fumes emitted from diesel engines for residents. She urged the Planning Commission to pass the amendment to restrict size. She noted she would not have purchased a home in Upland had she known this would be such a large issue.

Jonathan Shardlow, Legislative Affairs Director for the National Association of Industrial Office Parks (NAIOP), advised the City is well-poised to continue its economic development for its location near transportation. He advised the proposal is draconian citing several areas of the City where a large warehouse does not have any negative impacts. He urged the City to maintain its CUP process for larger warehouses as opposed to an outright ban. He requested the item be continued so NAIOP can work with City staff.

H. Rhoads Martin spoke as a co-General Partner of Industrial Plaza in concern about the unilateral limitations on size. He echoed his business partner *Mr. Greek's* earlier comments and advised none of his tenants will go through the painful CUP process for smaller buildings. He called for further input and more meetings with stakeholders. He believes the ordinance will have dramatic unintended consequences.

Pete Lang spoke as a small business owner and longtime resident of Upland. He advised in 2000 his company, Cherokee Wood Products, built two buildings under the guidance of the City and donated a piece of land to the City for landscaping. He noted his company generates \$4.5 million for the City from 75 employees and thousands of customers. He exposed the lengthy charitable work his company has done for the City. He asked the Planning Commission to consider all of those who benefit from local-supplier Cherokee in denying the amendment.

Joshua Webb spoke on behalf of Cherokee Wood Products by telling his life story of going from rehabilitation to a changed responsible life through his work at Cherokee.

Matthew Moore spoke as the developer of the four-building project at the corner of Central Avenue and West 11th Street unanimously approved by the Planning Commission. He advised his project in mid-construction

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including an \$8 million loan would be in trouble due to this amendment and lead to litigation followed by bankruptcy. He explained they will only be able to use 25% of their land due to the amendment. He noted it is the most poorly constructed provision he has ever seen from Upland. He advised the provision is an Inverse Condemnation Proceeding waiting to happen and there will be lawyers coming from all over because the City would have essentially taken people's land by depriving them of the use. He explained it seems ham-fisted to take the Planning Commission out of the process and create an outright ban on larger warehouses through code. He urged the Planning Commission to oppose the amendment.

David Gores advised he is a real estate agent in escrow with a buyer for a property whose project would cease with this amendment due to its cumulative provision. He advised this would apply to other projects who would stay permanently undeveloped. He advised the Planning Commission already enjoys latitude to approve projects on a case-by-case basis and he urged continuing this process.

Development Services Director Dalquest added there were four letters written in opposition to the proposed amendment. He reported 1,100 notices went out to businesses and property owners in affected zoning districts. He advised there were no studies done as this is not a site-specific application.

Deputy City Attorney Maldonado explained the actions of the Planning Commission tonight will go to the City Council where there will be an additional public hearing.

In response to *Chair Aspinall's* inquiry, *Deputy City Attorney Maldonado* confirmed they are only making a recommendation to the City Council. He advised the recommendation can be an approval, denial, or anything in between with modifications. He advised they could also move to continue the item to have more time for analysis and revision.

In response to *Chair Aspinall's* inquiry, *Development Services Director Dalquest* confirmed the applicant tonight is the City.

Vice Chair Schwary noted the creator of the ordinance did not do so with malice and had good intentions and explained good intentions are not always good actions. He advised the saying "if it is not broke, do not fix it" applies here because this would break it badly. He noted Upland survived long before them with this zoning and noted the Bridge Development Project probably fanned the flames. He explained certain portions of the City are not conducive for things like retail and hotels and noted the Planning Commission must be flexible to adjust to the times and an ordinance like this puts them in a box. He does not believe this should go forward. He advised it will put existing businesses in jeopardy and common sense should take over.

In response to *Chair Aspinall's* inquiry regarding the Fence Craft property and the proposed project on this site, *Development Services Director Dalquest* explained staff would prefer properties facing Foothill Boulevard have a commercial presence.

In response to *Commissioner Caldwell's* inquiry, *Development Services Director Dalquest* advised the commercial presence is not a code requirement but something they worked out with the developer.

In response to *Vice Chair Schwary's* inquiries, *Development Services Director Dalquest* confirmed this can be done because the City has the flexibility to do so and because there is no requirement.

In response to *Chair Aspinall's* inquiry, *Deputy City Attorney Maldonado* confirmed this amendment would open the City up to potential lawsuits from non-conforming properties. He advised many public speakers noted they would bring litigation. He advised he could not opine on the lawsuits' chances of winning without more research.

Commissioner Grahn's expressed his approval for the new definition of warehousing. He advised he would add identifying a percentage of the floor area dedicated to the use or it becomes problematic when people try to define a majority of the area. He disagrees with the concept of cumulative square footage because it will put the City in a bind. He noted he prefers floor area ratio or other standards to limit the size of a building.

In response to *Vice Chair Schwary's* inquiries, *Development Services Director Dalquest* confirmed the City today would have the ability to say no to an application for a 70,000 square foot warehouse. *Commissioner*

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Grahn advised the Planning Commission did this recently with a project which included a 90,000 square foot building.

Commissioner Caldwell expressed her belief this would be overreaching and will create unintended circumstances. She advised it will put the City in a difficult position and expressed concerns about how many legal non-conforming situations will arise.

Chair Aspinall noted this amendment is a bad idea and agreed with the health concern for residential areas near these projects but noted the CUP process can address this.

In response to *Chair Aspinall's* inquiry, *Commissioner Grahn* clarified he is in favor of expanding the definition but noted this could come later because of how it is connected to the entire amendment here.

Development Services Director Dalquest advised it was done in this manner because if they were creating a prohibition on land use it required a more detailed definition. He explained the City Council was provided with different definitions from surrounding communities with warehouses, but they were not directed to amend the definition. He advised the Planning Commission can do this at a later time.

In response to *Vice Chair Schwary's* inquiry, *Deputy City Attorney Maldonado* agreed to articulate a motion to match the Planning Commission's intent.

In response to *Deputy City Attorney Maldonado's* inquiry, *Development Services Director Dalquest* agreed they will need to present findings to City Council if the Planning Commission moves to deny. He advised he has findings based upon the discussion.

In response to *Development Services Director Dalquest's* inquiry, *Vice Chair Schwary* advised the Planning Commission has codes it operates under. He advised they do not need to be restricted to size on projects and require the freedom to judge a project on its own merit case-by-case. He noted the cumulative part is even more onerous because it is very restrictive.

Commissioner Anderson expressed her agreement with *Vice Chair Schwary*. She noted it is ill-conceived and bad public policy to restrict potential growth opportunities.

In response to *Chair Aspinall's* inquiry, *Deputy City Attorney Maldonado* remarked he is hearing from the Planning Commission that it believes the amendment is inconsistent with the General Plan. *Development Services Director Dalquest* advised there are policies regarding economic development and others that can be extracted from the General Plan to make a finding in the negative.

Seeing no members of the public wishing to address the Commission, Chair Aspinall closed the public hearing.

Moved by *Vice Chair Schwary* to find the proposed project is statutorily exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines §15270 (a). He also moved to adopt a Planning Commission Resolution to recommend denial of Zoning Code Amendment No. 21-0001, in its entirety, to the City Council.

The motion was seconded by *Commissioner Anderson*.

The motion carried by the following vote (5-0-1):

AYES: *Chair Aspinall, Vice Chair Schwary, Commissioners Anderson, Caldwell, and Grahn*

NAYS: *None* ABSTAINED: *Commissioner Mayer*

ABSENT: *Commissioner Shim*

Vice Chair Schwary thanked the public speakers who waited patiently for the last item and helped form the Commission's opinions.

Commissioner Mayer rejoined the meeting at 9:32 p.m.

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10. COMMISSION COMMENTS

None

11. ADJOURNMENT

Moved by *Commissioner Anderson* to adjourn the meeting in memory of her grandson, Frank Dean Rosales, who was killed in a motorcycle accident on April 15, 2021.

The motion was seconded by *Chair Aspinall*.

There being no further business to come before the Planning Commission, *Chair Aspinall* adjourned the meeting at 9:33 P.M., to the regular meeting of the Planning Commission on June 23, 2021, at 6:30 P.M.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. Dalquest', followed by a long horizontal line extending to the right.

Robert D. Dalquest, Secretary
Upland Planning Commission